

Application/Control Number 09/922,188

Art Unit: 3764

Filing Date: 8/3/01

Applicant: Richard P. Bagby

Appn. Title: Anatomical Device

Primary Examiner: Michael A. Brown

Reply to Office Action dated September 17, 2004

Appl. No. 09/922,188 Arguments/ Remarks

Response to Detailed Action on page 2 regarding Koch, Dygert and Lau patents

Applicant feels it's important to note that his patent application was filed under the 128/883 Classification on Aug.3, 2001. This Class is listed under the heading of Sexual restraints. This subclass is indented under subclass 860. Subject matter for preventing nocturnal emissions, masturbation, copulation or other sexual activity or abuse." Only nineteen patents in 27 years have been filed under Class 128/883, from 2/3/77 to 5/18/2004. Only two of them have anything remotely related to with enhancing sexual pleasure by assisting penile performance. One is Tucker pat.5,713,830 Primary Examiner Michael Brown, listed under its primary **CL. 600/38; 128/883**. It is a cuff to used with a vacuum pump. The other is Kalb,et. **5,102,271 CL. 604/116; 600/38**, Primary Examiner Mickey Yu. This second patent is a ring designed to deliver drugs, including by its "Needle Guide." Most of the other 17 patents are in the field of rape prevention or other sexual activity or abuse. Applicant's application published 2/6/03 is one of two published; the other application is an amusement device in the form of a male chastity belt, filed under 128/883. Applicant firmly believes his application should have been filed under **Class 600/41 or 600/39**. Applicant questioned his attorney [Esq. James Duncan] as to why he filed under 128/883?

Mr. Duncan stated that's Class USPTO told him it was where it should be filed. There are 61 patents listed under **600/41**. Most of them pertain to improving penile performance. There are presently 220 patents listed under **600/38** and many of them relate to male erection devices.

**Class 600/41 is listing where many earlier patents have been up-dated to.** Bagby, Koch, Gorssuch and Northcutt were 128/79, but now are **600/41**. More recent Osbon and Burgos are filed under **600/41**. Under **Classification Definitions 600/41 reads;** **"41 Retention means; This subclass is indented under subclass 38. Subject matter comprising a pressure applicator means placed in partial or complete encirclement at the base of user's male member and sized or restricted in such fashion that venous blood flow from the member is restricted while still permitting arterial blood flow to contribute to turgidity in the member."** This is certainly a much more accurate description of applicant's 8/3/01 patent filing than CL 128/883! This is very similar to "Background Of The Invention" in Feb.6, 2003 published application.

**Class 600/38 in Definitions reads; Sexual Appliance: This subclass is indented under the class definition. Subject matter which comprises means to substitute for or enhance the act of human copulation. [1] Note. the term copulation, as used in this subclass those subordinate hereto, is considered to be included to inclusive of any permutation of gender among participants. . [2] Note. The terminology copulation enhancement is considered to be inclusive of any device, appliance, or parapher-nalia which provides a**

**sexual aid or a substitute means.** Class 600/38 likewise would relate more accurately to applicant's application and several of patents cited in "Background of Invention," than the 128/883 field.

**Lau patent 5,749, 862 [5/12/98] Class 604/353, 128/844 & 128/918** Applicant again points out that Lau patent is a **condom improving device**. Classification Definitions state the following under CL. 604/353; **CL 604/353 Body or body member encircling belt, strap, or harness; This subclass is indented under subclass 351. Subject matter including either an elongated strip of material with or without securing means of a rigging means for holding a receptor on the body or the body member. CL. 128/844 states; 844 Condoms; This subclass is indented under subclass 842. Subject matter wherein the external shield or device is a penile sheath usually made of thin, flexible, natural or synthetic rubber material for use during sexual intercourse to prevent disease and receive male sperm. CL. 128/918 states; 918 Condoms and shield: Device or shield made of thin, flexible, natural or synthetic rubber material worn on the body to prevent disease transmission.** Applicants agrees that these classifications very precisely pertain to Mr. Lau's "Condom Improving Device", but have no intent to improve penile performance by constricting the return venous blood flow returning to body from the penis. In fact his patent explains that aperture must fit tight enough to retain condom secured to shield, but not too tightly as to constrict blood flow.

The Lau patent says rather ambiguously on line 42 of Column 2," Since a penis **usually has a substantially circular**, or sometimes elliptical, cross section, it is preferred that the aperture 10 and the collar 3 are **ALSO CIRCULAR** so as to closely follow its outline such that the resilient stress is reasonably evenly distributed along the perimeter. From the foregoing, Mr. Lau's preference seems in claim 8 to be inclined towards a circular cross section. Claim 8

The combination of a Condom Improving Device and an aperture stretcher according to claim 7 wherein said rigid frame is **SUBSTANTIALLY CIRCULAR or elliptical**" Does this teach that penis is circular...or elliptical?

Dygert in his 1917 patent 1,221,518 states in column 2, lines 80-86; **In my invention the shape of the loop is of fundamental importance. The male generative organ, or penis, being composed interiorly of three parallel, cylindrical masses of erectile tissue, Fig. VIII,v, is of somewhat TRIANGULAR SHAPE IN ITS TRANSVERSE SECTION, as shown in Fig. VIII**

z. Perhaps this is the reason the Flynn patent 5,327,910 [examined by Michael Brown] is triangular in its **TRIANGULAR SHAPE**. [cited in applicant's appl.] He states in column 2, lines 49-50, The device 20, see FIGS. 3 and 4, is generally **TRIANGULAR** in front view. It's noteworthy that Flynn patent is very similar in appearance to Bagby patent [3,794,020] and he references Bagby patent. The Bagby patent, however was open on its underside. Also the Flynn patent has notches on the "V" part, very similar to Koch patent, except "The textured sections may have diagonal, longitudinal or criss-crossed lines or slots." [Lines

13-15 of Column 2 on Flynn patent] Koch [pat. 4,202,432] asserts in his illustration a **ROUND PENIS**. Koch states in lines 13 and 14 on Column 2, **Fig. 1 is a diagrammatic cross sectional view of a male penis, in a state of erection.**" Applicant does not believe that the male organ has changed since Dygert's mention of it being "somewhat triangular in shape." As is evident by language used in this O.A., applicant is not an attorney, but he believes that there could be no motive or suggestion to combine the reference to elliptical in Lau's "Condom Improving Device" with devices of Koch and Dygert as he believes as required under United States patent law. For the same reasons applicant did not believe the Forsell patent was relevant either in earlier O.A.. The Koch patent never achieved commercial success and the patent has been around for 24 years. The Bagby patent 3,794,020 has exceeded sales of over two million dollars since 1984. It, like present application employ the function of exerting pressure on the superficial dorsal vein and an "Open Underside" to provide clearance around the urethra.

**Koch patent 4,203,432** This circular device, with opening at the top, instead of open at the bottom side, can not exert localized pressure on the superficial dorsal on top side of penis because it has an opening at the top of its round design, or even in closed position as illustrated in Fig. 2, there is a notch. Instead Koch contends that applying pressure around the periphery will adequately constrict the venous return flow of blood as stated Column 3, lines 7-20. "Connector band 6 is then again looped into hook portions 8 of the **ring** as shown, with lugs 10

in indenting relation to the organ so as to restrict return flow of blood to the body in a portion of the veins of the organ close to its surface to assist the maintenance of erection as previously described, while the ring portions within the notches 12 do not engage the organ at all, or only lightly, so as not to interfere with **VENIAL FLOW IN ONLY A PORTION OF THE PERIPHERY**, the numbness and insensitivity which would result from a more complete constriction is avoided.” Osbon’s 94 patent 5,306,227 suggests a similar principle as stated in claim 8; “A cincturing device for improving male potency by being elastically fitted to the base of a user’s male sex organ for cincturing blood flow therefrom a **PERIPHERAL AREAS OF SUCH ORGAN**, so as to retain an engorged condition thereof, said device comprising.” **BURGOS** patent 5,810,710 asserts the same thing in his claim 1, which states, “A split ring extendable about the base of a human penile organ having overlapping free ends with releasable fastening means carried by each said ends and mateable with similar means carried by the opposite one of said ends to form releasable fastening means for said ends to provide adjustable **CONSTRICTION OF THE SUPERFICIAL VEINS AROUND THE BASE OF A HUMAN PENILE ORGAN.**” An alternative principle is to apply localized pressure on the superficial dorsal vein as in Kelly 1995 patent 5,421,324 as in claim 1 where one portion explains “said cylinder having a length such the cylinder is able to span laterally across the **DORSAL REGION OF A PENIS OVER THE DORSAL VEIN;**” This is

illustrated in Fig. 4 and Fig. 3 of Kelly 95 patent. Kelly's later 96 patent 5,526,802 uses same principle as he mentions in claim 1 of his newer patent. Flynn's patent 5,327,910 also employs pressure on dorsal vein in his claim 6; "wherein: the first substantially rigid portion bears on the top of the penis" This comes from "lips" 28 and 29 as in Figs. 4, 5, 6 & 7 on sheet 2 of 3. It is appreciated that Michael Brown examined these last 3 mentioned patents and with his substantial experience applicant believes he will give these principles employed their due consideration. Again the earlier Bagby patent has a proven track record of more than 2 million dollars of sales which indicates its alternative method for achieving a satisfactory erection really works well!

**DYGERT patent 1,221,518 4/ 3/ 1917** Koch, Osbon, Flynn, Kelly are all cited in my patent application. Koch is also cited in those above mentioned and the **PLACE patent 5,855,548 issued Jan 5, 1999.** The Place "Veneous Flow Control, Element For Maintaining Penile Erection" is a vertical loop attached at the bottom with a band and is **IDENTICAL IN APPEARANCE to the Dygert patent.** On front page and illustrated in Figs. 1 and 3, the Place device is also a **LOOP [claim 1]** and it too can be adjusted in size from smaller to larger. Jennifer Bahr examined this patent and her name appears on a number of patents in these classifications. By Dygert's wording and illustration in his drawings, the PLACE device would be "ovate" in shape; larger at the top and narrowing down where distal portions meet as it forms a **"LOOP" 22 in Fig. 1 and slides through ring 20** which acts as an adjustable locking mechanism, much like the


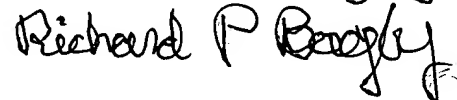
"Sheath" e in Figs. II, IV, V, VII and VIII of the Dygert drawings. Both the Dygert and PLACE loops are made of soft, flexible rubber, Both constrict the peripheral veins around the base of the penis. The **"COFFEE" leaf if ovate, not elliptical. It is wider at one end and more narrow at the other end much like a loop that's shaped like a noose. The major axis in a loop like the Dygert and PLACE devices is VERTICAL, while the major axis in applicant's horizontally elliptical device is HORIZONTAL.** The principle employed in the horizontally elliptical device is that it is made of a much firmer material [not soft rubber] so it maintains a near horizontal portion [102] in Figs. 1, 2, 3 & 4 of sheet 1 of 15 in application 2003/0024536 A1, lying across the top side of the penis, exerting more localized pressure on the superficial dorsal vein than would ever be possible if were merely round the top [like Dygert patent] and made of a soft, flexible rubber that would preclude maintain the necessary rigidity required. As mentioned in applicant's application, the underside of the penis is lifted upwards. This "upwards lifting" is made possible by the 50 degree elliptical cradle that is firm enough in support to lift or force the organ upwards against the near horizontal top side of the ellipse, thus exerting the sufficient localize pressure against the superficial dorsal vein. Applicant's elliptical device is not merely a soft rubber loop, but rather a sufficiently firm horizontal ellipse that is totally open on the underside to give necessary clearance around the urethra, thus avoiding the tourniquet effect inherent in endless band or loop designs that tend to strangle the organ and can easily be over tightened.



Applicant's earlier patent 3,784,020 has a proven track record of two million dollars in sales that demonstrates that a firmer localized pressure on the superficial dorsal vein, while at the same time maintaining the needed critical clearance around the urethra are excellent and novel features that have satisfied many thousands of men and the orders keep coming in to this very day.

Applicant believes that the elliptical design will offer the same advantages of his earlier patent, but due to its even closer to the natural penile shape will be easier and quick to apply or remove and more comfortable to wear. So far the patent pending design has been very well received and applicant has a pending order for them to be filled. There is not a single elliptically shaped erection aid on the U.S. market that applicant is aware of. There are dozens of rubber ring and loop devices; while they are much cheaper to manufacture, they do not offer the performance, quality or longevity of applicant's patent pending device. Applicant respectfully submits this application for your reconsideration. Applicant was 65 years old when this patent was filed nearly 4 years ago and for obvious reason hopes that fairness with integrity will prevail. Applicant regrets that patent, for whatever reasons, was filed under the incorrect classification which invited comparisons that really did not fit the anatomical device applied for.

Very sincerely yours,

 1/17/05  
Dick Bagby January 17, 2005  




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